Office of the
Ohio Consumers' Counsel

Robert S. Tongren
Consumers' Counsel

May 29, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98, Part 1 - Reply Comments

Dear Secretary:

Enclosed please find the original and sixteen (16) copies of the Office of the Ohio Consumers' Counsel's Reply Comments to be filed in the above referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Sincerely,

David C. Bergmann
Assistant Consumers' Counsel

DCB/pjm

Enclosure

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	

REPLY COMMENTS OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL (Part 1)

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SUMMARY OF REPLY COMMENTS OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL (Part 1)

The Office of the Ohio Consumers' Counsel (OCC) offers its reply comments in this rulemaking, which will establish conditions for key aspects of local exchange competition: the interconnection of networks, the unbundling of network elements, the resale of telecommunications services, and termination of local traffic. The crucial question raised here is the degree of specificity that the Commission's rules will impose.

The two extremes in filed comments were on the one hand that there should be extremely detailed preemptive rules, and on the other that the Commission should establish only minimal guidelines. These positions are typically taken by new entrants, and by incumbents or state commissions, respectively. OCC urges a middle ground in most cases.

OCC also argues that adoption of these rules can be accomplished without massive changes in the interstate access charge regime. Further, although there is some connection between the issues dealt with here and universal service, the 1996 Act requires this Commission to conclude this rulemaking prior to deciding universal service issues.

On interconnection, the key issues are the degree of specificity of the rules and the allowed forms of pricing. OCC finds support for its position that a set of minimum technical specifications is appropriate, with the states being free to establish additional requirements. On pricing, OCC refutes both those who would have interconnection priced at incremental cost and those who would use embedded cost or the efficient component pricing rule.

On network elements, OCC supports a list somewhat more detailed than the minimum four elements discussed in the NPRM. Pursuant to the statute, purchasers of network elements must be able to combine these elements at their discretion. Pricing principles for network elements should follow those for interconnection.

On resale, OCC rejects the views of those who would alter the statutory pricing formula. OCC also refutes those who would read a prohibition against arbitrage between rebundled network elements and resale services into the statute. This arbitrage may cause results that are not strictly economically efficient, but the law allows such arbitrage.

Although the pricing standard for termination of traffic in the statute is different from that for interconnection and network elements, the Commission still lacks the power to impose strict rules. The Commission also lacks the power to mandate a bill and keep structure. However, OCC urges the Commission to encourage the states to adopt such mechanisms, particularly if the mechanisms include payment for imbalances as proposed by OCC.

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REPLY COMMENTS OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL (Part 1)

INTRODUCTION

The Office of the Ohio Consumers' Counsel (OCC) is pleased to offer its reply to certain of the comments filed in this docket on May 16, 1996.[1] As expected, the widely divergent interests represented here resulted in widely divergent comments.

As also expected, many parties to this proceeding disguise their special interests in particular interpretations of statutes and of the Commission's Notice of Proposed Rulemaking (NPRM). No instance is more blatant, however, than AT&T's claim that the

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[1] The comments reviewed by OCC and replied to here include those of Ameritech; AT&T Corp. (AT&T); Cincinnati Bell Telephone (CBT); Consumer Federation of America and Consumers Union (CFA); Illinois Commerce Commission (IllCC); John Staurulakis, Inc. (JSI); Massachusetts Department of Public Utilities (MassDPU); National Association of Regulatory Utility Commissioners (NARUC); National Association of State Utility Consumer Advocates (NASUCA); Public Utilities Commission of Ohio (PUCO); Time Warner Communications Holdings, Inc. (TW); and United States Telephone Association (USTA).

discussion in NPRM ¶¶ 1-3 and 25-35 shows the Commission's tentative conclusion that "explicit national rules" should be adopted to implement the Act's provision under discussion in this NPRM. OCC trusts that the Commission has actually retained an open mind on the degree of explicitness and comprehensiveness required to implement the Act.

The comments filed concerning the technical aspects of interconnection, collocation and network unbundling (NPRM ¶¶ 49-116) establish a pattern that, at the extremes, pits the position of the interexchange carrier (IXC) and cable commenters against the incumbent local exchange companies (ILECs) and state commission commenters, with the other parties seemingly aligning themselves with one camp or the other on one issue or another. The ILECs and state commissions tend to downplay the need for the Commission to establish anything but minimal guidelines (*see, e.g.*, USTA at 3-4, NARUC at 5-7, Ameritech at 7) while the IXCs and cable providers stress the need for detailed, explicit guidelines with very little room for state variance. *See, e.g.*, MCI at 16-19, NCTA at 4, Time Warner at 5-6, AT&T at 3-5

OCC recommended a middle ground in its initial comments, recognizing a need for Commission guidance concerning the very contentious subject matter at issue, while also recognizing a need for regional and local flexibility. The fact that the major facilities-based stakeholders in this proceeding have staked out the opposing extremes with respect to the technical aspects of the implementation of Sec. 251 suggests that the Commission must, of practical necessity, opt for the middle ground as well when it proposes its rules. The successful implementation of the 1996 Act is dependent on firm and explicit guidance

from the Commission; but it is also dependent on a liberal measure of flexibility to allow the parties and the states to best match the requirements of the Act with their specific circumstances.

These reply comments retain the outline structure of the NPRM. For consistency's sake, headings are included here even if no reply is made on that issue.

COMMENTS

II. PROVISIONS OF SECTION 251

II.A. Scope of the Commission's Regulations (Paragraphs 25-41)

NARUC states (at 17): "The statute simply cannot be read to allow, let alone require, the Commission to establish pricing principles for the states to apply in carrying out the state's responsibilities in arbitrating agreements." In general, NARUC argues (at 14-15) that the Commission only has authority to establish limited rules. We agree with Ameritech (at 7) that detailed federal guidelines would prevent meaningful carrier negotiations.

AT&T claims, on the other hand, that Sec 251(d) requires that the "minimum national content of sec. 251(c)'s interconnection, unbundling, pricing, resale, and related requirements are to be defined by the Commission now." AT&T at 4. Quite obviously, this assumes that Congress intended "regulations to implement the requirements of this section" (Sec. 251(d)) to require the establishment of a "minimum national content" for

Sec. 251(c). Nothing explicit in the statute establishes such an "interventionist" requirement. USTA at 6.

AT&T also claims that "the terms of the Act . . make it explicit that these regulations are to preclude state-by-state variations in the definition of the Act's minimum requirements...." AT&T at 4. To the contrary. The Act *throughout* gives the states wide latitude, requiring only consistency to general principles rather than slavish devotion to a single set of national requirements. What AT&T proposes as explicit national rules (*see, e.g.*, AT&T at 55-66) goes far beyond the Act's requirements.

AT&T also claims (at 11) that the adoption of explicit national rules will prevent "hundreds of overlapping review and enforcement proceedings." OCC submits that given the amount of money that is at stake in this industry, the adoption of extremely explicit and prescriptive rules by this Commission will not significantly reduce the amount of litigation to follow.

AT&T then says that waivers will be the solution to overly prescriptive Commission rules. AT&T at 13. A multitude of waiver requests will clearly not diminish the amount of litigation surrounding the development of local exchange competition.

Coming back to the other side of this argument, NARUC (at 15) submits that the Commission should determine only unbundled network elements and prescribe regulations for resale. Here again, we agree with NARUC (at 25) that "the FCC's rules should be very general." *See also* NYCPB at 3 (Commission "rules should preserve broad discretion for individual states"). OCC submits that our position on resale and network elements is

consistent with these principles. However, with regard to the pricing of network elements; OCC argues that pricing above embedded costs or at LRSIC would defeat the purposes of the 1996 Act. *See id.* at 14.

PUCO's succinct description of the appropriate level of federal guidance deserves serious consideration. PUCO at ii. PUCO's proposal for a default set of detailed FCC rules (*id.* at i) is unnecessary, however; OCC is confident that carriers wanting to serve in particular states, as well as consumers seeking the benefits of local exchange competition, will effectively push state commissions to act. General principles set by the Commission should be adequate guidance for any state. Individual preemption proceedings (*id.* at 7) should allow the Commission (like the states) to tailor its approach to the individual states' situations.

OCC also agrees with PUCO that the Commission's rationale that "it would make little sense" to recognize a division between interstate and intrastate components (NPRM at ¶ 37) ignores the very real fact of the jurisdictional limits of the federal and state jurisdictions. There is the entirely intrastate realm, over which the Commission has no power and the state commissions have complete authority; there is also the exclusively interstate realm, in which the Commission rules alone; and, finally, there is the mutual authority range. There the Commission's authority is limited by the 1996 Act's directives that it may only override state policies that are inconsistent with the specific terms of the Act itself. *Id.* at 16.

IllCC argues (at 64) that the Commission does not have the authority to require local rates to exceed cost of service. We agree In fact, state commissions and consumer advocates alike dispute the Commission's power to set local rates. Given that lack of authority, the Commission specifically lacks the authority to assign the entirety of loop costs to local service in general and local basic service in particular. NASUCA's comments correctly focus on the Commission's consistent assumption that loop costs should be recovered exclusively from local exchange service, refuting the assumption in detail. NASUCA at 8-22 [2]

The state commissions seek to limit the reach of the Commission's rules. CBT, on the other hand, seeks delay. CBT urges the Commission not "to implement the provisions of Section 251 without a complete overhaul of the current universal service support structure to remove all implicit subsidies from LEC rates, without access charge reform, and without allowing LECs to rebalance and deaverage their current rates." CBT at 4-5. The Act contains no such mandate; the mandate in the Act is in fact explicitly for the Sec. 251 proceedings to be completed well before the Sec. 254 proceedings to revamp universal service support mechanisms are completed. *Compare* Sec. 251(d)(1) *to* Sec. 254(a)(2). And the Act says *nothing* about rebalancing or access charge reform.

As rationale for the need for a comprehensive overhaul of the system before competition is allowed, CBT raises the specter of confiscation. CBT claims that "[w]ere

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[2] This issue is also crucial in the Commission's universal service docket, CC 96-45. *See* Reply Comments of the Office of the Ohio Consumers' Counsel (May 7, 1992) at 3.

the Commission not to allow a mechanism for the recovery of these costs [the total cost of providing interconnection and unbundled elements, including joint, common and historical costs], the legitimate expectations of LECs upon which these costs were incurred would be eliminated, thus effecting a taking of the property of the LEC without just compensation." CBT at 5. In essence, CBT is arguing that ILECs have the right to be made whole through regulation. The Commission will be hearing this argument with some frequency as the 1996 Act is implemented. However, this argument has no basis in law. At most, a utility is entitled to an opportunity to earn a reasonable rate of return on equity, and nothing more. *Duquesne Light Co. v. Barash*, 488 U.S. 299, 310 (1989) upheld the right of regulators to do precisely what CBT is suggesting would be confiscation (statutory disallowance of prudently incurred investment). The only thing that matters from the perspective of the Fifth Amendment is the overall rate of return on equity of the utility. Even then, all that matters is that a *reasonable opportunity* to earn such a return is available. There is no such thing as a right to be made whole. *Id.*

II. B. Obligations Imposed by Section 251(c) on "Incumbent LECs" (Paragraphs 42-194)

One subject receiving much comment was whether the obligations explicitly placed on incumbent local exchange companies (ILECs) by the 1996 Act can or should also be placed on non-ILECs, also referred to as new entrant carriers (NECs). IllCC argues (at 20) that the Commission should not require reciprocal obligations on LECs and NECs. On the other hand, PUCO correctly points out (at 21) that states may require obligations of

NECs not specified in the Act. The restrictions on the Commission treating NECs as ILECs (Sec. 251(h)(2); *see* TW at 14) do not apply to the states.

A number of parties (*e.g.*, MassDPU at 6; MCI at 5, n.7) have suggested that the states are prohibited, by implication, from imposing the duties contained in Sec. 251(c) on non-ILECs. In effect, they are arguing that the maxim "*expressio unius est exclusio alterius*" applies to Sec. 251 by virtue of the structure of Sec 251(b) and (c) and the divergent treatment therein of ILECs and other carriers. This interpretation of Sec. 251 leads to unnecessarily narrow results. For instance, according to this interpretation, an interconnection made by a non-ILEC pursuant to Sec. 251(b)(1) is different from that of an ILEC. The non-ILEC interconnection would have to be for purposes other than the transmission and routing of telephone exchange service and exchange access, as specified by Sec. 251(c)(2)(A). There is simply no rational basis to make Secs. 251(b) and (c) mutually exclusive.

The 1996 Act takes a balanced approach to competition. Along with the ability of states to impose additional requirements on NECs (as noted above), the Act places specific requirements on ILECs that are not automatically imposed on NECs.

OCC believes that it is important for the Commission to remain firmly focused on the purpose and nature of Sec. 251(c) as it promulgates rules pursuant to that subsection. Sec. 251(c) is aimed squarely at the hazard posed to the implementation of local competition pursuant to the 1996 Act by the present monopoly status of the ILECs. The incumbents with their market dominance and control of the local bottleneck will be able to

prevent effective access of other carriers to consumers. (Some would say the ILECs have already done so.) The nature of this hazard is set out in detail by a number of parties. *See, e.g.*, CFA/CU at 7-8. Sec. 251(c) would not be necessary but for the threat posed by the ILECs' monopoly status. Hence Sec. 251(c) is remedial in nature, rather than serving to impose a particular structure on the industry. OCC recommends that the Commission keep this overriding purpose in mind as it crafts rules pursuant to this subsection.

Merely because a separate subsection is necessary to address the specific problem of the monopoly power of the ILECs does not mean that certain of the provisions contained in Sec. 251(c) may not be beneficial to competition generally. If the states, in shaping the marketplace within their territories, deem it appropriate to uniformly impose some of the obligations set out in Sec. 251(c) on all carriers, there is no inherent conflict with the purposes of that subsection.

II.B.1. Duty to Negotiate in Good Faith (Paragraphs 46-48)

TW at (15-24) and AT&T at (86-88) propose that the Commission adopt principles to determine breaches in the duty to negotiate in good faith. OCC takes no position on the specifics of these proposals. However, OCC would point out that even if "national standards providing guidance on what constitutes good faith negotiation will *facilitate* agreements" (TW at 24; emphasis added), this does not make such guidelines *necessary* to implement the requirements of Sec. 251. IllCC (at 22-24) "strongly recommends against any attempts to define with precision the term 'good faith.'" Here, as usual, the Commission must balance these divergent views.

II.B.2. Interconnection, Collocation, and Unbundled Elements (Paragraphs 49-171)

a. Interconnection (paragraphs 49-55)

(1) Technically Feasible Points of Interconnection (Paragraphs 56-59)

(2) Just, Reasonable, and Nondiscriminatory Interconnection (Paragraphs 60-62)

(3) Interconnection that is Equal in Quality (Paragraph 63)

TW at 31 argues that performance standards and penalties should be specified in interconnection agreements. Although it is probably a good idea for a state commission arbitrating an interconnection agreement to include performance standards, there is no reason to impose such a requirement up front on negotiations.

(4) Relationship Between Interconnection and Other Obligations Under the 1996 Act (Paragraphs 64-65)

b. Collocation (Paragraphs 66-73)

Time Warner incorrectly argues (at 40) for collocation to be priced at TSLRIC, and refers to the "cost standard of the statute" *Id.* n 48. In the first place, the Commission acknowledged "the absence of any pricing rule for collocation in section 252...." NPRM at ¶ 122. Even if Sec. 252(d)(1) did cover collocation, pricing *at* TSLRIC is not what the statute requires. *See* OCC Initial Comments at 21-22.

c. Unbundled Network Elements (Paragraphs 74-116)

(1) Network Elements (Paragraphs 83-85)

USTA proposes that the Commission define only four network elements. USTA at 23. However, USTA acknowledges (*id.*) that "parties or the states are free to go farther than the Commission's minimum standards." That should be true regardless of the number of elements prescribed by the Commission.

(2) Access to Network Elements (Paragraphs 86-91)

NARUC proposes (at 31) that the Commission should adopt a minimum number of elements and should allow states to require additional unbundling. *See also* IllCC at 39-40; PUCO at 30. OCC agrees. OCC also agrees with IllCC (at 44) that "reasonable minimum national criteria would be helpful to ensure at least a basic standard across regions...." We also agree with AT&T (at 18) that states may require additional unbundling. However, we disagree with AT&T (*id.*) that the *Commission* may require additional unbundling and that the Commission should prescribe the conditions under which states must allow additional unbundling. This represents an overreaching of the authority granted by the Act.

AT&T has a valid point (at 34) that rules establishing minimum national standards for electronic ordering interfaces, and requiring network elements to be provided using the same installation, service, and maintenance intervals that the LEC uses for its own end user services, are appropriate. The four broad categories of transactions for which AT&T argues the electronic interfaces should be available (*id.* at 36-37) also seem reasonable.

(3) Specific Unbundling Proposals (Paragraphs 92-116)

Ameritech argues (at 34-35) that because the four categories of network elements listed in NPRM ¶ 93 (loops, switches, transport and databases) are part of the competitive checklist of Sec. 271(c)(2)(B), that these are the only elements that the Commission should mandate.[3] OCC would note, however, that Sec. 271(c)(2)(B)(ii) lists "access to network elements" *separately* from local loops, switches, transport, and databases. Secs. 271(c)(2)(B)(iv), (v), (vi), and (x). Clearly, the RBOCs are required to offer unbundled elements in addition to the four listed by the Commission.

AT&T, on the other hand, argues (at 16-18), as the NPRM noted (at ¶ 92) for a minimum of eleven elements. OCC submits that it is more likely that competition will be harmed by a list that is too short than by one that is too long.

(a) Local Loops (Paragraphs 94-97)

(b) Local Switching Capability (Paragraphs 98-103)

(c) Local Transport and Special Access (Paragraphs 104-106)

(d) Databases and Signaling Systems (Paragraphs 107-116)

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[3] We note that CBT (at 16) argues that only local loops and ports should be the minimum elements. This is clearly inadequate to foster effective local competition.

d. Pricing of Interconnection, Collocation, and Unbundled Network Elements (Paragraphs 117-157)

(1) Commission's Authority to Set Pricing Principles (Paragraphs 117-120)

PUCO argues (at 39) that the Commission has no power to adopt pricing principles. OCC suggests that the upper and lower bounds for prices proposed by OCC (OCC Initial Comments at 24-25) are within the Commission's power to adopt, in furtherance of the duty to ensure that rates are just, reasonable, non-discriminatory (Sec. 252(d)(1)), and that retail universal service rates bear no more than a reasonable share of joint and common costs. Sec. 254(k).

IllCC submits (at 46) that the Commission should dictate that rates "be based on" forward-looking rather than historical or embedded costs. OCC agrees.

Ameritech threatens that "unless incumbent LECs are able to recover joint and common costs in their prices for interconnection, network elements, collocation, and resold services, these joint and common costs will have to be recovered from the incumbent LEC's remaining customers -- who, most likely, will be residential customers." In response, OCC notes three things: First, pricing above LRSIC *does* allow recovery of joint and common costs; it just does not *guarantee* such recovery. Second, the guarantee of recovery that Ameritech apparently seeks sounds very much like a pitch for rate base rate of return regulation, from which Ameritech has managed to escape. And finally,

Ameritech's current returns indicate clearly that Ameritech is *over-recovering* its joint and common costs, a characteristic of an unrestrained monopoly.[4]

(2) Statutory Language (Paragraphs 121-122)

(3) Rate Levels (Paragraphs 123-148)

(a) LRIC-Based Pricing Methodology (Paragraphs 126-133)

AT&T deals with TSLRIC-based pricing in great if not exhaustive detail. AT&T at 45-66. Despite this detail, it is only by implication that one can determine that AT&T intends rates for interconnection and network elements to be *at* TSLRIC, not *based on* TSLRIC (*i.e.*, including a contribution in excess of economic costs). *See, e.g., id.* at 45 ("the LECs current monopoly control ... will enable them strategically to set prices above economic costs"), 48-49 ("TSLRIC is also an essential protection against ILEC efforts to prevent entry or squeeze competitors by pricing network elements above economic cost").

AT&T's detailed prescription for rules to determine TSLRIC (*id.* at 55-66) might be appropriate if rates were to be set at economic cost However, given the substantial discretion accorded to the states in setting these rates (*see* OCC Initial Comments at 21-22), there is no need for the Commission to so narrowly prescribe the conduct of cost studies.

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[4] Ameritech's solicitude toward "the social policy of maintaining available and affordable rates" (*id.*) is especially interesting given Ameritech's comments in CC Docket No. 96-45 declaring that the need to "rebalance," *i.e.*, increase, rates "is the most important problem the Commission must address in this docket." Ameritech Comments at 3.

OCC agrees with Ameritech (at 63-65) that the "costs" of an element include TSLRIC *and* joint costs and those costs should be recovered (although Ameritech avoids the question of how to apportion the joint costs). However, we disagree with Ameritech (at 67-70) that overhead and "residual" costs must be recovered. In effect, Ameritech seeks a guarantee of recovery for these costs from each of its services; such a guarantee is entirely inconsistent with the competitive paradigm. *See* Ameritech at 71, 77.

OCC strongly disagrees with Ameritech's claim that efficient component pricing (ECPR) accomplishes the goals of the Act. Ameritech at 92-93. OCC agrees with the Commission's tentative conclusion (NPRM at ¶¶ 147-148) that use of ECPR is contrary to the express terms of the Act (*see* OCC Initial Comments at 25, n.7), a conclusion Ameritech fails to address.[5] *See also* TW at 56-58.

(b) Proxy-Based Outer Bounds for Reasonable Rates (Paragraphs 134-143)

(c) Other Issues (Paragraphs 144-148)

OCC would note strong agreement with Ameritech (at 21) that Sec. 251 "does not displace the existing toll access charge regime." The Act is actually silent on the subject of interstate interexchange access charges.

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[5] OCC presented an extensive discussion of the flaws of both ECPR and direct cost of supply (DDS) or incremental cost pricing to the PUCO in an attachment to reply comments filed January 31, 1996 in Case No. 95-845-TP-COI, *In the Matter of the Commission's Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*. CFA/CU present essentially the same discussion in their comments here. CFA/CU at 37-45.

(4) Rate Structure (Paragraphs 149-154)

We agree with AT&T's three basic principles proposed for the Commission to adopt. AT&T at 67. However, the specific prescriptions for rate structure proposed by AT&T (at 67-68) are unnecessary given adoption of the three principles.

(5) Discrimination (Paragraphs 155-156)

Here again, a delicate balance is needed in administering the Act. Thus while we agree with IllCC (at 52) that the Commission should permit "carriers to charge different rates to parties that are not similarly situated," we also agree with AT&T that "a discount that is practically available only to the ILEC or is otherwise structured to favor the ILEC, is unlawful under the nondiscrimination provisions of the 1996 Act." AT&T at 69.

(6) Relationship to Existing State Regulation and Agreements (Paragraph 157)

e. Interexchange Services, Commercial Mobile Radio Services, and Non-Competing Neighbor LECs (Paragraphs 158-169)

(1) Interexchange Services (Paragraphs 159-165)

(2) Commercial Mobile Radio Services (Paragraphs 166-169)

(3) Non-Competing Neighboring LECs (Paragraphs 170-171)

We agree with IllCC (at 60) that "sound public policy requires that interconnection arrangements with adjacent LECs be made available to competing LECs." *See also* TW at 63-64. In this context, Ameritech continues its argument that an existing agreement "cannot be an agreement reached through a request and voluntary negotiations pursuant to

section 252(a)(1) and, therefore, need not be submitted to the relevant state commission for approval pursuant to section 252(e)." Ameritech at 96; *see also* CBT at 9-10. This argument effectively reads out of the statute the phrase "including any interconnection agreement negotiated before the effective date of the Telecommunications Act of 1996." CBT's argument that the phrase "was clearly intended to apply to interconnection agreements between incumbent LECs and new entrants in states that had already authorized local exchange competition" (*id.* at 10) lacks support in the statute or the legislative history. *See* AT&T at 88-89.

III.B.3. Resale Obligations of Incumbent LECs (Paragraphs 172-188)

a. Statutory Language (Paragraphs 172-173)

b. Resale Services and Conditions (Paragraphs 174-177)

OCC agrees with AT&T that it would be helpful for the Commission to adopt a minimum list of services that must be offered for resale AT&T at 77, n.113.[6] Further, the Commission should also make clear that the states may direct resale of additional services *Id.*

We agree with PUCO (at 61) that states may require facilities-based carriers other than ILECs to resell service at wholesale rates. Hence we disagree with TW's position on this issue. TW at 66. However, OCC would point out (as in our Initial Comments at 35)

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[6] OCC has one exception to AT&T's list. As explained in OCC's initial comments (at 36), truly temporary promotional rates should not be subject to resale.

that states also have the power to require non-ILECs to resell at rates different from those required of ILECs.

TW, as a facilities-based provider, argues that "Congress was looking toward the development of alternative local networks to be the primary source of competition for ILECs." TW at 67. TW disdains pure resale competition (*id.* at 69), yet fails to recognize the extent to which it is unlikely that alternative local networks *will* be built in many areas of the nation. It is also unlikely that networks will be built in addition to the current telephone and cable networks. Thus without a vigorous resale program, consumers will be left with a duopoly, hardly the epitome of vigorous competition. TW's analysis of the advantages of resellers (*id.* at 70) simply represents TW's attempt to protect its own interests.

AT&T, on the other hand, is a strong proponent of resale. However, AT&T goes too far when it states that the "Act contemplates only one permissible restriction on resale...." AT&T at 79. Rather, the Act prohibits "unreasonable or discriminatory conditions or limitations" on resale (Sec. 251(c)(4)(B)), thus implying that there are "reasonable and nondiscriminatory" conditions or limitations. The Act specifically identifies and permits an intercategory restriction.

JSI proposes special limitations on resale for rural telephone companies (RTCs). JSI at 5. Such limitations are not needed in the near term: RTCs are exempt from the resale obligations of Sec. 251(c) until a request for interconnection has been received and the state commission has made specific findings. Sec. 251(f)(1). However, by its specific